

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CLINICOMP INTERNATIONAL, INC.

Plaintiff,

v.

ATHENAHEALTH, INC.

Defendant.

CIVIL ACTION No. 1:18-CV-00425-LY

**JOINT NOTICE OF DECISION ON APPEAL AFFIRMING FINAL WRITTEN
DECISION IN IPR**

Plaintiff CliniComp International, Inc. (“CliniComp”) and Defendant athenahealth, Inc. (“Athena”) hereby provide notice that on May 27, 2021, the U.S. Court of Appeals for the Federal Circuit issued its mandate, after having affirmed the final written decision issued by the Patent Trial and Appeal Board (“PTAB”) in the *Inter Partes* Review (“IPR”) of U.S. Patent 6,665, 647 (the “’647 patent”). This final written decision found that “Petitioner has proven that claims 50–55 [of the ’647 patent] are unpatentable” and “that Petitioner has not proven that claims 1–25 are unpatentable.” The IPR has now reached final resolution and is no longer the subject of an appeal. A copy of the Federal Circuit’s mandate is attached hereto as Exhibit A.

Relevant Procedural Background

The Final Pretrial Conference in this case is set for November 5, 2021, with a jury trial set to start on January 18, 2022. (Dkt. No. 225).

On December 11, 2017, CliniComp filed a complaint against Cerner Corporation asserting that Cerner infringes the ’647 patent. Thereafter, on May 21, 2018, CliniComp filed its complaint against Athena in this action asserting that Athena also infringes the ’647 patent.

On August 31, 2018, Cerner filed a petition for *Inter Partes* Review challenging claims 1-25 and 50-55 of the '647 patent (IPR2018-01634). On April 5, 2019, Athena filed a motion to join the Cerner IPR, along with a corresponding essentially identical IPR petition (IPR2019-00926). Athena's motion to join the Cerner IPR was granted, and Athena was joined to the Cerner IPR as an "understudy" petitioner; as such, Athena was not permitted to "introduce any argument or discovery not already introduced by Cerner."

The PTAB's Final Written Decision

On March 26, 2020, the PTAB issued its Final Written Decision finding that "Petitioner has proven that claims 50–55 are unpatentable" and "that Petitioner has not proven that claims 1–25 are unpatentable." (Dkt. No. 68 at 9). CliniComp dismissed claims 50-55 from this litigation with prejudice after they were found unpatentable by the PTAB.

The Federal Circuit's Affirmance of the PTAB's Final Written Decision

Athena and Cerner timely appealed the PTAB's Final Written Decision to the United States Court of Appeals for the Federal Circuit. In its *per curiam* decision entered on April 20, 2021, the Federal Circuit denied the appeal, and affirmed the final written decision of the PTAB. A copy of the Federal Circuit's decision is attached hereto as Exhibit B.

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DATED: October 22, 2021

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on October 22, 2021 and was served via CM/ECF on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(b)(1).

Dated: October 22, 2021

/s/ Bruce R. Zisser

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